DEPARTMENT OF VETERANS APPAIRS Justification and Approval For Other Than Full and Open Competition

- <u>Contracting Activity</u>: Department of Veterans Affairs, Network Contracting Office (NCO9), Nectivitie/Murfreesboro (TVHS), Tennessee
- 2. Mature and/or Description of the Action Baing Processed:

This is a request for other than full and open competition for the procurement of Home Oxygen Services from the incumbent of an expired contract, Ed Medical, Inc 5343 Herding Place, Nashville, The Services was previously interrupted by a protest ruling. The NCO initiated a new procurement and it has been interrupted by three subsequent protests. A ruling on the most recent protest by the Department of Justice (DOJ) has not been rendered to date and there is no projected date. This interim contract will provide Home Oxygen Service coverage during the gap between the expired contract and the new contract to be awarded after protest ruling.

3. Description of Supplies/Services Required to Most the Agency's Needs:

The contractor will provide Home Oxygen Supplies and Services for Veterans and Seneficieries of the TVHS VA Medical Center (VAMC) catchment area. The VAMC currently serves an estimated 9,800 oxygen-using patients covering parts of Northern Alebema, Western Georgia, Eastern Arkanese, Southwestern Kentucky, Northeastern Mississippi and Tennesees. Required services include storage, delivery, set-up, adjustment, patient/caregiver instructions and recovery of equipment. The contractor has applicable expertise in government sequisition and program management disciplines.

4. Statutory Authority Permitting Other than Full and Open Competition: 41 USC §253(c), as implemented by FAR 6.302.

(X) (1) Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements per FAR 6.302-1;
() (2) Unusual and Compelling Urgency per FAR 6.302-2;
() (3) Industrial Mobilization, Engineering, Developmental or Research Capability or Expert Services per FAR 6.302-3;
() (4) International Agreement per FAR 6.302-4;
() (5) Authorized or Required by Statute FAR 6.302-5;
() (7) Public Interest per FAR 6.302-7;

5. Demonstration that the Contractor's Unique Qualifications or Nature of the Acquisition flequines the Use of the Authority Cited Above (applicability of authority)): Only One

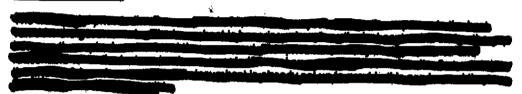
Responsible Source (FAR 6.302-1). The incumbent is currently performing this complex requirement at a satisfactory level. Accordingly, Ed Medical, inc is the only firm capable of providing the supplies and services described in Section 3 above without the Veterant's Health Administration experiencing unacceptable delays in fulfilling its requirements. A change in vendor would require finding a vendor that is capable of servicing appreximately 9,800 Veterans on home. The Vendor would need to have access to the equipment necessary to make this change and background checks would need to have access to the equipment necessary to make this change and background checks would need to be completed on the new employees which would result in a delay in service; therefore, the only option svaliable is to sate source to the incumbent. A disruption in services an acceptable solution. We have received a total of three protests regarding the requirement. Two against the previous solicitation in which a ruling anused the Government to cancel that solicitation and one for cancelling the solicitation described that our patients have home oxygen services that are uninterrupted. Our contract has expired which has made it necessary to put in place an interim contract. This option represents the best value for the government.

among other things, because they have been vetted for compliance with VA policies, including security, privacy and payment protocols

6. Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:

A competitive procurement was in process and will be undertaken after litigation is resolved. Changing vendors while under protest is not acceptable (see 8-299395.3, 2007 CPD P 126, 2007 WZ. 2034990 (Comp.Gan.) due to previous court decisions. There are approximately 9,800 Veterans on the home coyagen program which have been serviced by this contractor. The vest geographical area that is serviced by this contractor makes it difficult and expensive to have the equipment switched out. The contractor is responsible for providing all the equipment and supplies that are necessary to service this contract. The DOJ has been contacted several times by Regional Coursel requesting a final ruling. There is no anticipated award date for a new IDIC contract award in the immediate future.

 Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Resecrable:



8. Description of the Market Research Conducted and the Results, or a Statement of the Research Market Research Was Not Conducted:

Market research was completed for the solicitation currently under protest. The Government will solicit and award under NAICS Code 532291.

- Any Other Facts Supporting the Use of Other than Full and Open Competition: The following determinations are made:
 - a. Requiring NCO 9 to stop work during the pendency of the current DCJ protest will severally impact the ability of VtSN 9 Medical Facility to meet the mission readiness to serve this vital need to our Veterans.
 - Continuation of the service with the incumbent is necessary in order to provide essential, ordinal and life threatening support to this VISN 9 Medical Facility.
- 10. Listing of Sources that Expressed, in Writing, an Interest in the Acquisition:
- 11. A Statement of the Actions, if any, the Agency May Take to Remove or Overnome any Services to Committee or services required:
- 12. Requirements Certification: I certify that the requirement outlined in this justification is a Bone Fide Need of the Department of Veterans Affairs and that the supporting data under my cognizance, which are included in the justification, are accurate and complete to the best of my knowledge and belief.

13. Approvals in accordance with FAR 6.304

Jon E. Dollane, Contracting Officer

 Contraction Officer's Conffication fracultedly i certify that the foregoing justification is accurate and complete to the best of my knowledge and belief.

Roviow by: Edwa Killing	9/21/2012
Earnest Yelling, Chief Prophetical Landington Prepared by:	Date
Donald R. Lerson, Contracting Officer	9/21/2012 Date
Reviewed by: Och End December	glalla

 MCM (Reculred SNK and above): I certify the justification meets requirements for other than full and open competition.

Recommend Appropriate Linda S. Giraves, NCM, NCD 9	9/24/12 Date
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 ACC (If over \$5000): I certify the justification meets requirements for other than full and open connectition.

Recommend Approvet:	20d12
Rock Lawyerfon	Date
Acting Oirector Service Area Office, Central	•

b. <u>WHA HCA Review and Ashronal</u>: I have reviewed the foregoing justification and find it to be complete and accurate to the best of my knowledge and belief and recommend approval (if over \$10million) or approve (\$500K to \$10 million) for other than full and open competition.

Norbert Doyle
Chief Procurement and Logistics Officer
VHA Head of Contracting Activity (HCA)